COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, SEPTEMBER 10, 1999

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

Ex Parte: Investigation of the termination of local exchange services for failure to pay for long distance services

CASE NO. PUC970113

OPINION

On May 10, 1999, the Commission issued its Order on Reconsideration in this case, adopting rules regarding disconnection of local exchange telephone service for nonpayment of long distance services. The Order made only minor modifications to the rules, which had been adopted in the Commission's Final Order entered on February 26, 1999. Foremost among these new rules is one that permits disconnection of local telephone service ("DNP") only for a customer's failure to pay for those tariffed services billed on behalf of the local exchange carrier ("LEC"). The rules in effect prior to the changes effected herein permitted disconnection of local telephone service for nonpayment of long distance services provided by a certificated interexchange carrier ("IXC").[1] Other rules adopted in this case pertain to billing disclosure requirements, directory publication, selective toll blocking, and the crediting of partial payments made by customers.

[1] While disconnection can only be effected for nonpayment of these specific charges, the Commission has received complaints of disconnection or threats of disconnection for nonpayment of charges of non-certificated carriers, or for nonpayment of other products or services appearing on the local telephone bill.

We have the authority either to prohibit or permit LECs to disconnect local service for a customer's failure to pay charges unrelated to local exchange service and owed to another carrier or provider. On January 27, 1988, the Commission issued its order in Case No. PUC870004,[2] in which we permitted LECs to continue to exercise the option of disconnecting a customer's local service for nonpayment of "long distance services provided by a certificated IXC and billed by the LEC."[3] These powers are simply one aspect of the Commission's broad regulatory authority, including the authority to promulgate rules and regulations, under the Constitution and Code of Virginia in the administration of all laws within its jurisdiction, including the regulation of telephone public utilities.[4] Further, there is no question of federal preemption of our authority in this area.[5]

The present case was initiated by the Commission in light of both improvements in technology and the proliferation of new competitive carriers, boosted recently by the availability of dialing parity for IXCs in most areas of the Commonwealth. Given these changes that have taken place in the marketplace, we determined that the issue of DNP merited further review and reconsideration. Having considered the numerous comments and testimony filed in this case by the parties to this proceeding, we found that the public interest required that we amend our prior

[2] Commonwealth of Virginia ex. rel State Corporation Commission Ex Parte: Investigation of deregulation of telephone company billing and collection services, 1988 S.C.C. Ann. Rep. 231.

[3] Id. at 232.

[4] Va. Const. Art. IX, Sec. 2; § 12.1-13 of the Code of Virginia.

[5] The Federal Communications Commission ("FCC") preserved state jurisdiction in this area in its Report and Order adopted on January 14, 1985, In the Matter of Detariffing of Billing and Collection Services ("Report and Order"). In that Report and Order, the FCC found that although it had preemptive authority over regulation of the terms and conditions under which disconnection for nonpayment would be allowed, it deferred to the states to determine whether and under what circumstances LECs would be permitted to discontinue local services for nonpayment of interstate toll services. 102 F.C.C.2d 1150, ¶ 51.

rule to permit disconnection of local service only for failure to pay for tariffed services billed on behalf of the local exchange carrier.

In no other industry can one business threaten to terminate (or terminate) service for a customer's failure to pay a bill allegedly owed to another company. As was stated by a witness at the hearing, "A finance company, for example, cannot threaten to disconnect your electric service because you don't make your car payments." Likewise, we find that Bell Atlantic should no longer be able to disconnect local service due to a customer's failure to pay AT&T long distance charges, for example. Even more strongly, we believe that customers should not lose their local service, or be led to believe they will lose their local service, simply because they may wish to contest charges for unauthorized use of their telephones, or for services never ordered or received by them.[6] While disconnection of service may have been convenient for the carriers, it is by no means the only way in which carriers may collect their debts. After all, the courts of the Commonwealth have never been made unavailable to any class of litigants, including telephone companies.

The prior DNP policy was sensible during earlier periods when the end user contracted for both local and long distance service from essentially the same source, or from a limited number of optional carriers, most of whom were certificated by and regulated to some extent by the Commission. Today, however, the service provided by an IXC is unrelated to a customer's local service. In fact, the LEC's relationship to the customer, with respect to the service provided by the IXC, is only that of billing agent or purchaser of receivables. As the FCC has stated, "A

[6] The proliferation of billing complaints regarding billing for services provided by carriers unauthorized by the customer, and billing complaints for services not ordered or received has actually caused new words to appear in the language: the former is known as “spamming” and the latter is known as “cramming.” Both have become national problems for the industry.

serious question of fairness to customers is raised where a subscriber's local telephone service is placed in jeopardy by a telco in its capacity as collection agent or holder of I[X]C receivables."[7]

The Telecommunications Act of 1996 ("the 1996 Act") continues to embrace the longstanding public policy of universal service – requirements that mandate access to basic local telephone service for every citizen at affordable rates. With respect to intrastate service, the states have the responsibility to ensure that universal service is available at just, reasonable, and affordable rates. Under the 1996 Act, Congress recognized and continued the states' significant responsibility to maintain universal service in a competitive environment.[8] It is our view that permitting local exchange carriers to disconnect local service for a customer's failure to pay for long distance services impedes our efforts to ensure necessary access to telecommunications services for all Virginia consumers. Drawing a "bright line," limiting DNP only to tariffed services of the LECs themselves, will eliminate a vast amount of customer and carrier confusion[9] and should enhance a customer's ability to challenge unauthorized charges appearing on his or her bill without fear of loss of vital local telephone service.

Carriers opposed to the implementation of the new rules raised two central arguments: (1) the disallowance of DNP will increase industry uncollectible revenue and collection expense,

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[7] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, 97 F.C.C.2d 1082 (February 17, 1984). The FCC further stated: "It is not the telco's [LEC's] customers who would be disconnected but rather the customers of the telco's customer, the I[X]C. Therefore, the I[X]C should be the one to determine when to stop providing service to one of its customers. It is ultimately responsible for bearing the burden of uncollectibles, not the telco [LEC]. If the I[X]C chooses to carry a customer who has been delinquent in his payments that should be its own business decision, subject to the requirements of the Act. The telephone company [LEC] should not be allowed to control the I[X]C's operations." Id.

[8] See 47 U.S.C. § 254(f).

[9] The distinction between permissible disconnection, for nonpayment of charges of certificated carriers, and non-permissible disconnection, for nonpayment of uncertificated carriers, is no longer meaningful, given the great numbers of new entrants in the IXC market. There is no readily discernible way to know whether a particular IXC is or is not certificated.

and these increased expenses may be passed on to consumers; and (2) should the Commission forbid DNP, it should also permit global toll blocking, rather than selective toll blocking, to prevent customers from taking advantage of IXCs.

First, Bell Atlantic, Sprint, AT&T, and MCI argue that uncollectibles expenses will increase dramatically as a result of our new policy, and that these costs may ultimately cause Virginia consumers to pay higher rates for telecommunications services. Despite the fervor with which the carriers raised this issue, none were able to provide any convincing evidence that telephone rates have increased in states where similar DNP policies were implemented as a result of the implementation of such policies. The record, therefore, does not support the carriers' argument.

The carriers maintained further that selective toll blocking, rather than global toll blocking, allows a consumer to jump from one long distance provider to another when the bill gets too high, leaving mounds of unpaid bills in his wake. This argument carries no great weight, especially in a competitive environment. Sprint should not be prevented from providing service to a customer just because that customer has not yet paid MCI in full. We live in a competitive world in which consumers and companies now make their own long distance service choices. Sprint can either choose not to serve the customer with the unpaid MCI bill based on the customer's credit history, or offer service despite the risk, but the local carrier should not be able to make that choice for Sprint or the customer. Our new policy forecloses this option for the LEC.

Advances in technology, together with the passage of the 1996 Act,[10] fundamentally restructured local telephone markets, ended the monopolies that states historically granted to

[10] Preceded, we should note, by the General Assembly's elimination of the local monopoly by enactment of § 56-265.4:4 C of the Code of Virginia in 1995.

local exchange carriers, and opened the door to a whole host of new issues in the telecommunications industry. Along with the multitude of technological innovations and opportunities brought about by these advances came unanticipated and unwelcomed by-products of competition. Slamming and cramming have risen dramatically since passage of the Act, and the proliferation of carriers has created much confusion and opportunity for sham dealing in the marketplace. Despite these unfortunate side effects, competition has and will continue to bring many benefits to the Commonwealth. It remains our obligation to mitigate, to the extent we can, competition's negative effects. We hope that with adoption of these rules, local exchange carriers will be more discriminating when choosing the companies for whom they bill, thereby reducing the instances of cramming in Virginia. It is also our intention to ensure that in this new era of market-driven pricing and services, preservation of universal service continues to remain an important policy so that Virginia citizens continue to have equal access to basic telecommunications services.

We have given the proposed rules, the comments by the various parties to this proceeding, and the testimony presented at the hearing our most careful consideration. It is our opinion that our decision to disallow DNP for failure to pay for charges other than tariffed local exchange services is in the best interests of the Commonwealth. The proposed new rules not only will best serve the interests of Virginia consumers, but will also help to further, rather than frustrate, the goals of the 1996 Act and the directive of the Virginia General Assembly that we "assure the provision of competitive services to all classes of customers throughout all geographic areas of the Commonwealth by a variety of service providers[.]"[11]

[11] § 56-265.4:4 C 3 of the Code of Virginia.